



Billing Code: 6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2013-0663; FRL-9908-09-Region9]**

#### **Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Lead (Pb)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving in part and disapproving in part State Implementation Plan (SIP) revisions submitted by the State of Nevada pursuant to the requirements of the Clean Air Act (CAA) for the 2008 lead (Pb) national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, and that EPA act on such SIPs. Nevada has met most of the applicable requirements. Where EPA is disapproving, in part, Nevada's SIP revisions, most of the deficiencies have already been addressed by a federal implementation plan (FIP). For one remaining deficiency, this final rule sets a two-year deadline for EPA to promulgate a FIP, unless EPA approves an adequate SIP revision prior to that time. EPA remains committed to working with Nevada's environmental agencies to develop such a SIP revision.

**DATES:** This final rule is effective on **[insert date 30 days from the date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action, identified by Docket ID Number EPA-R09-OAR-2013-0663. The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**FOR FURTHER INFORMATION CONTACT:** Rory Mays, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3227, [mays.rory@epa.gov](mailto:mays.rory@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms "we," "us," and "our" refer to EPA.

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### **I. Background**

Section 110(a)(1) of the CAA requires each state to submit to EPA, within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the "implementation, maintenance, and enforcement" of such NAAQS. EPA refers to these specific submissions as

"infrastructure" SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS.

On October 15, 2008, EPA issued a revised NAAQS for Pb.<sup>1</sup> This NAAQS revision triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years. The Nevada Division of Environmental Protection (NDEP) submitted infrastructure SIP revisions for Pb to EPA on October 12, 2011, for the NDEP and Washoe County portions of the SIP; July 23, 2012, for the Clark County portion of the SIP; and August 30, 2012, which amended several of the state's infrastructure SIP submittals, including the October 12, 2011 submittal for the 2008 Pb NAAQS. We refer to them collectively herein as "Nevada's Pb Infrastructure Submittal."

On October 29, 2013 (78 FR 64430), EPA proposed to approve in part, and disapprove in part, these SIP revisions addressing the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2008 Pb NAAQS. We are taking final action on all three submittals since they collectively address the applicable infrastructure SIP requirements for the 2008 Pb NAAQS.

The rationale supporting EPA's action is explained in our October 29, 2013 Notice of Proposed Rulemaking (proposed rule)<sup>2</sup> and the two associated technical support documents (TSDs)<sup>3</sup> and will not be restated here. The proposed rule and TSDs are available online at <http://www.regulations.gov>, Docket ID number EPA-R09-OAR-2013-0663.

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<sup>1</sup> 73 FR 66964. The final rule was signed on October 15, 2008 and published in the Federal Register on November 12, 2008. The 1978 Pb standard (1.5 µg/m<sup>3</sup> as a quarterly average) was modified to a rolling 3-month average not to exceed 0.15 µg/m<sup>3</sup>. EPA also revised the secondary NAAQS to 0.15 µg/m<sup>3</sup> and made it identical to the revised primary standard.

<sup>2</sup> 78 FR 64430, October 29, 2013.

<sup>3</sup> The two TSDs are as follows: 1) "Pb Infrastructure SIP Technical Support Document: EPA Evaluation of Nevada Infrastructure SIP for 2008 Pb NAAQS," September 2013 ("Pb TSD"); and 2) "Technical Support Document: EPA Evaluation of Nevada Provisions for Section 110(a)(2)(E)(ii)/Section 128 Conflict of Interest Requirements," July 2012 ("Section 128 TSD"), which was prepared for our 2012 rulemaking on Nevada's infrastructure SIPs for the 1997 ozone, 1997 fine particulate matter (PM<sub>2.5</sub>), and 2006 PM<sub>2.5</sub> NAAQS (77 FR 64737, October 23, 2012).

## **II. EPA's Response to Comments**

The public comment period on EPA's proposed rule opened on October 29, 2013, the date of its publication in the Federal Register, and closed on November 29, 2013. During this period, EPA received one comment letter from NDEP on November 27, 2013 (herein "NDEP's comment letter"). This letter is available in the docket to today's final rule.<sup>4</sup>

### *Comment:*

NDEP notes that EPA proposed to disapprove the portion of Nevada's Pb Infrastructure Submittal related to prevention of significant deterioration (PSD) permit programs for NDEP and Washoe County because the programs do not completely satisfy the statutory and regulatory requirements for PSD permit programs. NDEP also notes, however, that EPA recognizes that the deficiencies related to the PSD programs are adequately addressed by the existing federal implementation plan (FIP), for which EPA has delegated enforcement authority to NDEP and Washoe County District Health Department (WCDHD). Moreover, NDEP argues that "its PSD program is ultimately SIP-based"<sup>5</sup> and refers to page 4 of its October 12, 2011 submittal wherein NDEP states that it has full delegation of the federal PSD program at 40 CFR 52.21, including provisions that tailored the PSD permitting thresholds for greenhouse gases. NDEP's comment letter then asserts that the portion of Nevada's SIP found at 40 CFR 52.1485(b), which incorporates EPA's PSD FIP provisions in the Nevada SIP, make EPA's PSD FIP a part of the SIP, with the exception of the portion applicable to Clark County. As such, NDEP believes that

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<sup>4</sup> See document number EPA-R09-OAR-2013-0663-0010 at <http://www.regulations.gov> under docket ID number EPA-R09-OAR-2013-0663.

<sup>5</sup> NDEP's comment letter, p1.

the elements of Nevada's Pb Infrastructure Submittal related to PSD programs under the jurisdiction of NDEP and WCDHD should be approved.

*Response:*

We disagree with NDEP's argument that Nevada's Pb Infrastructure Submittal should be approved for PSD-related infrastructure SIP requirements for the NDEP and WCDHD jurisdictions. We note that NDEP and WCDHD submitted similar comments in 2012 with respect to EPA's proposed rulemaking on infrastructure SIPs for the 1997 ozone, 1997 fine particulate matter (PM<sub>2.5</sub>), and 2006 PM<sub>2.5</sub> NAAQS. Our response to NDEP's comment largely reiterates our response to NDEP and WCDHD's comments on delegated PSD FIP programs during our 2012 rulemaking on Nevada's infrastructure SIPs.<sup>6</sup>

The CAA requires each state to adopt and submit a plan which provides for implementation, maintenance, and enforcement of the NAAQS. *See* CAA section 110(a)(1). Section 110(a)(2) sets forth the content requirements for such plans, including the requirement for a permit program as required in part C ("Prevention of Significant Deterioration of Air Quality," or "PSD") of title I of the CAA. Such plans are referred to as state implementation plans or SIPs.

EPA's authority to promulgate a FIP derives from EPA's determination that a state has failed to submit a complete, required SIP submission or from EPA's disapproval of a state submission of a SIP or SIP revision. *See* CAA section 110(c)(1). The SIP, viewed broadly, thus includes both portions of the plan submitted by the state and approved by EPA as well as any FIP

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<sup>6</sup> 77 FR 64737, October 23, 2012.

promulgated by EPA to substitute for a state plan disapproved by EPA or not submitted by a state.<sup>7</sup>

In 1974, EPA disapproved each state's SIP with respect to PSD and promulgated a FIP as a substitute for the SIP deficiency ("PSD FIP").<sup>8</sup> In 1975, EPA codified the PSD FIP in each state's subpart in 40 CFR part 52.<sup>9</sup> In 1978 and 1980, EPA amended the PSD regulations following the Clean Air Act Amendments of 1977 and related court decisions and amended the codification of the PSD FIP in each state's subpart, including 40 CFR 52.1485, accordingly.<sup>10</sup>

Since then, EPA has approved the PSD SIP for the sources and geographic area that lie within the jurisdiction of Clark County Department of Air Quality (DAQ), and has delegated responsibility for conducting PSD review, as per the PSD FIP, to NDEP and WCDHD. Notwithstanding the delegation, however, the Nevada SIP remains deficient with respect to PSD for the geographic areas and stationary sources that lie within NDEP and WCDHD's jurisdictions. As such, EPA's disapproval of the infrastructure SIP submittals for those elements that require states to have a SIP that includes a PSD permit program, including CAA sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), is appropriate because EPA disapproved the state's submitted plan as not adequately addressing PSD program requirements. To conclude otherwise would be inconsistent with the long-standing and current disapproval of the SIP for PSD for the applicable areas, with the statutory foundation upon which the PSD FIP is authorized, and with the obligation under section 110(a) for each state to adopt and submit a plan for implementation, maintenance, and enforcement of the NAAQS that includes a PSD program. EPA's delegation of

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<sup>7</sup> 40 CFR 52.02(b).

<sup>8</sup> 39 FR 42510, December 5, 1974.

<sup>9</sup> 40 FR 25004, June 12, 1975, adding 40 CFR 52.1485 to Subpart DD – Nevada.

<sup>10</sup> 43 FR 26380, June 19, 1978 and 45 FR 52676, August 7, 1980.

the PSD FIP is not the same as state adoption and submittal of state or district rules meeting PSD requirements and EPA's approval thereof.

### **III. Final Action**

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSDs, and this final rule, EPA is approving in part and disapproving in part Nevada's Pb Infrastructure Submittal for the 2008 Pb NAAQS. In the following subsections, we list the elements for which we are finalizing approval or disapproval and provide a summary of the basis for those elements that are partially disapproved. We also describe the consequences of our disapprovals.

#### *A. Summary of Approvals*

EPA is approving Nevada's Pb Infrastructure Submittal with respect to the following requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport.
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F) (in part): Stationary source monitoring and reporting.

- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

#### *B. Summary of Disapprovals*

EPA is disapproving Nevada's Pb Infrastructure Submittal with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport.
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(F) (in part): Stationary source monitoring and reporting.
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.

As explained in our proposed rule, Pb TSD, and section II of this final rule, we are disapproving Nevada's Pb Infrastructure Submittal for the NDEP and Washoe County portions of the SIP with respect to the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J) because the Nevada SIP does not fully



satisfy the statutory and regulatory requirements for PSD permit programs under part C, title I of the Act. Both NDEP and WCDHD implement the Federal PSD program in 40 CFR 52.21 for all regulated new source review (NSR) pollutants, pursuant to delegation agreements with EPA.<sup>11</sup> Accordingly, although the Nevada SIP remains deficient with respect to PSD requirements in both the NDEP and Washoe County portions of the SIP, these deficiencies are adequately addressed in both areas by the federal PSD program.

We are disapproving the Clark County portion of Nevada's Pb Infrastructure Submittal with respect to the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) because Clark County's SIP-approved PSD permit program does not contain provisions that satisfy the statutory and regulatory requirements concerning condensable PM and PM<sub>2.5</sub> increments under part C, title I of the Act and in 40 CFR 51.166.<sup>12</sup> As discussed in our proposed rule, we address these PSD requirements for PM<sub>2.5</sub> as part of this final rule on Nevada's Pb Infrastructure Submittal for the 2008 Pb NAAQS because section 110(a)(2) of the Act requires that each SIP contain a comprehensive PSD permitting program that addresses all regulated NSR pollutants, including greenhouse gases (GHGs).

We are also disapproving the NDEP and Clark County portions of Nevada's Pb Infrastructure Submittal with respect to section 110(a)(2)(C) because of unique circumstances regarding NDEP and Clark County's minor NSR permit programs. Specifically, the NDEP and Clark County minor NSR programs, as approved into the Nevada SIP, lack provisions to address the 2008 Pb NAAQS, and thus we cannot rely on these programs to ensure that new and

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<sup>11</sup> 40 CFR 52.1485.

<sup>12</sup> Requirements for condensable PM were promulgated in EPA's NSR/PSD implementation rule for the 1997 PM<sub>2.5</sub> NAAQS. *See* 73 FR 28321, May 16, 2008; codified at 40 CFR 51.166(b)(49). Requirements for PSD increments for PM<sub>2.5</sub> were promulgated in EPA's PSD implementation rule for the 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS. *See* 75 FR 64864, October 20, 2010; codified at 40 CFR 51.166(c).

modified sources regulated under minor NSR do not interfere with attainment and maintenance of the 2008 Pb NAAQS.<sup>13</sup> Note, however, that within this final rule, we are not approving or disapproving any existing or new minor NSR regulation.<sup>14</sup>

We are disapproving the Clark County portion of the SIP for section 110(a)(2)(F)(iii) because Clark County has repealed its regulation, Section 24, that formerly addressed the correlation requirement of this subsection, without submitting a SIP revision to replace it.

### *C. Consequences of Disapprovals*

EPA takes very seriously a disapproval of a state plan, as we believe that it is preferable, and preferred in the provisions of the Clean Air Act, that these requirements be implemented through state plans. A state plan need not contain exactly the same provisions that EPA might require, but EPA must be able to find that the state plan is consistent with the requirements of the Act in accordance with its obligations under section 110(k). Further, EPA's oversight role requires that it assure consistent implementation of Clean Air Act requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. EPA believes these disapprovals are the only path that is consistent with the Act at this time.

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<sup>13</sup> Regarding NDEP's minor NSR permit program, *see* our proposal (77 FR 38557 at 38564, June 28, 2012) and final rule (77 FR 59321 at 59325-59326, September 27, 2012). Regarding Clark County's NSR permit programs, *see* our proposal (77 FR 43206, July 24, 2012) and final rule (77 FR 64309, October 18, 2012). These final rules and their context specific to the 2008 Pb NAAQS are discussed further in our Pb TSD.

<sup>14</sup> The Nevada State Environmental Commission revised Nevada Administrative Code 445B.22097 ("Standards of quality for ambient air"), effective December 23, 2013, such that the state ambient air quality standards for Pb and ozone would reflect the 2008 Pb and 2008 ozone NAAQS. NDEP submitted the revised rule to EPA as a revision to the Nevada SIP on January 3, 2014. It was submitted, in part, to address the minor NSR requirement of CAA section 110(a)(2)(C) for the 2008 Pb NAAQS for the NDEP portion of the Nevada SIP. While EPA may determine this SIP revision to be adequate for purposes of minor NSR for the 2008 Pb NAAQS for the NDEP portion of the SIP, EPA is still required to partially disapprove Nevada's Pb Infrastructure Submittal for section 110(a)(2)(C) due to other permit program deficiencies discussed in this section (section III.B) of this final rule for each of the three jurisdictions in Nevada.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D of title I of the CAA (CAA sections 171-193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Nevada's Pb Infrastructure Submittal was not submitted to meet either of these requirements. Therefore, our partial disapproval of Nevada's Pb Infrastructure Submittal does not trigger mandatory sanctions under CAA section 179.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a FIP within two years after finding that a state has failed to make a required submission or disapproving a SIP submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. As discussed in section III.B of this final rule and in our Pb TSD, we are finalizing several partial disapprovals. With one exception, however, these disapprovals do not result in new FIP obligations, either because EPA has already promulgated a FIP to address the identified deficiency or because a FIP clock has been triggered by EPA's disapproval of a prior SIP submission based on the same identified deficiency. The provisions for which our final partial disapproval do not result in a new FIP obligation include:

- PSD-related requirements in sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J): For NDEP and Washoe County, EPA has already promulgated the federal PSD program (see 40 CFR 52.1485);
- PSD-related requirements in sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J): For Clark County, EPA's October 18, 2012 final action on Clark County's PSD regulations triggered a November 19, 2014 deadline for EPA to promulgate a FIP addressing this requirement (77 FR 64039);

- Minor NSR requirement in section 110(a)(2)(C): EPA's September 27, 2012 final action on NDEP's minor NSR regulations (77 FR 59321) and October 18, 2012 final action on Clark County's minor NSR regulations (77 FR 64039) triggered deadlines of October 29, 2014 and November 19, 2014, respectively, for EPA to promulgate FIPs addressing the identified deficiencies;
- Section 110(a)(2)(F)(iii): For Clark County, EPA's October 23, 2012 final action on Nevada's Infrastructure SIP submittals for the 1997 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS (77 FR 64737) triggered a November 23, 2014 deadline for EPA to promulgate a FIP addressing the requirement for correlation of stationary source emissions with emission limits.

The one disapproval that triggers a new FIP clock concerns the requirement under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) and 110(a)(2)(J) regarding PSD increments for PM<sub>2.5</sub> in Clark County. EPA has not previously promulgated a FIP or triggered a FIP clock through disapproval of a prior SIP submission based on this deficiency. Thus, under CAA section 110(c)(1), our partial disapproval of the Clark County portion of Nevada's Pb Infrastructure Submittal based on this deficiency requires EPA to promulgate a FIP establishing PM<sub>2.5</sub> increments for Clark County within two years after the effective date of this final rule, unless the state submits and EPA approves a SIP revision that corrects this deficiency prior to the expiration of this two-year period.

We anticipate that NDEP will submit SIP revisions to address the deficiencies identified in EPA's 2012 actions on NDEP's minor NSR program,<sup>15</sup> Clark County's NSR permit programs

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<sup>15</sup> NDEP submitted a SIP revision on January 3, 2014 to address some of the deficiencies identified in EPA's 2012 action on NDEP's minor NSR program, as noted in section III.B of this final rule. If EPA determines that this SIP revision is adequate for purposes of minor NSR for the 2008 Pb NAAQS, EPA approval would remove the

(i.e., both PSD and minor NSR),<sup>16</sup> Nevada's infrastructure SIPs for the 1997 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS, and today's final action on Nevada's Pb Infrastructure Submittal prior to expiration of the two-year FIP deadline triggered by each of these actions. EPA approval of such revisions would serve to address the partial disapprovals of the Nevada Pb Infrastructure Submittal where no FIP is currently in place (i.e., the disapprovals finalized herein, except for those tied to the federal PSD programs for sources under NDEP and WCDHD's jurisdiction).

#### **IV. Statutory and Executive Order Reviews**

##### *A. Executive Order 12866, Regulatory Planning and Review*

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

##### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because this partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

##### *C. Regulatory Flexibility Act*

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obligation for EPA to promulgate a FIP by October 29, 2014 for minor NSR for the 2008 Pb NAAQS for the NDEP portion of the Nevada SIP only.

<sup>16</sup> On February 2, 2014, Clark County DAQ issued a 30-day public notice of proposed amendments to air quality regulations related primarily to permitting of new stationary sources. These proposed rule amendments are intended to address the deficiencies identified in EPA's 2012 rulemaking on Nevada's permit program and infrastructure SIP submittals for Clark County and other new source review requirements that have come due since those rulemakings.

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

#### *D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. EPA has determined that the partial approval and partial

disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action approves certain pre-existing requirements, and disapproves certain other pre-existing requirements, under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP on which EPA is proposing action would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new regulations but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP.

*H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with



applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in  
Minority Populations and Low-Income Population*

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States

prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. section 804(2). This rule will be effective on [**insert date 30 days from date of publication of this document in the Federal Register**].

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**insert date 60 days from date of publication of this document in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Pb, Particulate matter, Reporting and recordkeeping requirements.

February 28, 2014

Date

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Jared Blumenfeld  
Regional Administrator  
Region 9

Therefore, 40 CFR Chapter I is amended as follows:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

**Subpart DD—Nevada**

2. In § 52.1470, in paragraph (e), the table is amended by adding entries for:

a. "Nevada's Clean Air Act § 110(a)(1) and (2) State Implementation Plan for the 2008 Lead NAAQS, excluding appendices A-G for NDEP; and excluding the Washoe County District Board of Health Agenda, Minutes, Certificate of Adoption, Cover Letter to NDEP, and Proof of Publication"; and

b. "Clark County Portion of Nevada's Clean Air Act § 110(a)(1) and (2) State Implementation Plan for the 2008 Lead NAAQS, excluding Cover Letter to NDEP and Clark County Air Quality Regulations" after the entry for "Section 12—Resources".

The additions as follows:

**§ 52.1470 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA-Approved Nevada Nonregulatory Provisions and Quasi-Regulatory Measures**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
<b>Air Quality Implementation Plan for the State of Nevada</b>				
* * * * *				
Nevada's Clean Air Act § 110(a)(1) and (2) State Implementation Plan for the 2008 Lead	State-wide, within NDEP jurisdiction and Washoe County	10/12/2011	<b>[Insert Federal Register page number where the</b>	"Infrastructure" SIP for NDEP and Washoe County for the 2008 Pb standard.

NAAQS, excluding appendices A-G for NDEP; and excluding the Washoe County District Board of Health Agenda, Minutes, Certificate of Adoption, Cover Letter to NDEP, and Proof of Publication			document begins and insert date of <u>FR</u> publication date]		
Clark County Portion of Nevada’s Clean Air Act § 110(a)(1) and (2) State Implementation Plan for the 2008 Lead NAAQS, excluding Cover Letter to NDEP and Clark County Air Quality Regulations	Clark County	7/23/2012	[Insert <u>Federal Register</u> page number where the document begins and insert date of <u>FR</u> publication date]	"Infrastructure" SIP for Clark County for the 2008 Pb standard.	
*	*	*	*	*	*

3. Section 52.1472 is amended by adding paragraph (g) to read as follows:

**§ 52.1472 Approval status.**

\* \* \* \* \*

(g) *2008 Pb NAAQS*: The SIPs submitted on October 12, 2011, July 23, 2012, and August 30, 2012 are partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II), and (J) for the Nevada Division of Environmental Quality (NDEP), Clark County, and Washoe County portions of the Nevada SIP; for CAA element (D)(ii) for the NDEP and Washoe County portions of the Nevada SIP; and for CAA element 110(a)(2)(F)(iii) for the Clark County portion of the Nevada SIP.

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